

EXHIBIT A

PART 4

1 foot control without a locking plate would not
2 be defective on a power press? Have you ever
3 testified to that?

4 A. I have advocated the -- that gates not
5 be used on power presses for certain kinds of --
6 for certain kinds of -- you know, of
7 footswitches, so I am actually -- you know,
8 advocated the thing and published it and so
9 forth. I have the publications here that won't
10 let you do it.

11 Q. That say that a foot control is
12 actually more dangerous with a gate?

13 A. That's right, and this is a -- that has
14 to do with the punch press. And it has nothing
15 to do with a press brake.

16 Q. Unless the punch press is used
17 similar -- excuse me, unless the press brake is
18 used in a similar fashion as a punch press, is
19 that right?

20 A. Well, I don't know how this is going to
21 be used in a similar fashion to the -- you know,
22 to the units that I am talking about because I
23 am talking about fast machines that are full
24 revolution machines and this thing here is a

1 partial revolution machine that is slow motion
2 compared to the -- you know, to -- to punch
3 presses and has -- the general purpose of the
4 machine has you migrating and spending lots of
5 time between strokes.

6 The -- it is a completely different
7 animal, and I thought one of your witnesses did
8 a wonderful job of educating you on the
9 differences between the two machines.

10 Q. Is a -- is riding the pedal the most
11 prevalent cause of accidental activation of
12 power presses?

13 A. Yes.

14 Q. And is it true that the more difficult
15 it is to step into and out of a foot control the
16 more likely it is that operators will ride the
17 pedal?

18 A. Yes.

19 Q. Is it also true that the -- that
20 85 percent of all machine accidents are caused
21 by the user and only 5 percent of machine
22 accidents are caused by the machine?

23 A. Yes. Those were the statistics that I
24 have published.

1 Q. And as I mentioned to you --

2 A. They change --

3 Q. -- you try to draw your comments into
4 one transcript for use?

5 A. I think you are accurately representing
6 it.

7 Q. Have you ever taught at any other
8 location other than the institute here in
9 Chicago?

10 A. You mean with over 300 seminars around
11 the world?

12 Q. So there are other times where you have
13 taught?

14 A. Yes.

15 Q. And you have taught the industry as
16 well I think?

17 A. Yes.

18 Q. Have you ever taught the industry that
19 using an ungated foot control is defective on a
20 press brake?

21 A. I don't think I have addressed that
22 issue at all.

23 Q. Have you ever taught in your -- how
24 long have you been teaching at the -- in

1 Chicago?

2 A. 47 years.

3 Q. Have you ever taught in your courses
4 that using an ungated foot control on a press
5 brake is defective?

6 A. Probably. The -- because what I am
7 trying to do is minimize accidental activation,
8 and I would have gone through with my class all
9 of the different schemes that we now know about
10 for minimizing accidental activation.

11 Q. As you sit here today, sir, do you ever
12 remember teaching a class and indicating that
13 the use of an ungated foot control in a foot
14 brake is defective?

15 A. I don't really think the -- I have ever
16 stated it in that way.

17 Q. Have you ever written that opinion --
18 because that's the opinion you have here in this
19 case?

20 A. Right, right.

21 Q. Have you ever written on that opinion
22 before?

23 A. No, I think all the things I have
24 written about are power presses, not press

1 brakes.

2 Q. You have never written on a press
3 brake?

4 A. I have never written about this on a
5 press brake.

6 Q. You wrote about foot controls you said
7 with use on press brakes or power presses?

8 A. No, the things that I have done are
9 general. My work on -- is human factors work on
10 foot controls which allow you to apply this
11 stuff to any machine.

12 Q. That's my point. You have written on
13 the use of foot controls on any machine which
14 would include press brakes; is that fair?

15 A. That's right.

16 Q. Okay. Have you ever written that the
17 use of ungated foot control on a press brake is
18 defective?

19 A. No, you see in here I don't take any
20 machine -- on any of these things I have not
21 taken a machine and said for this machine this
22 is the one you have to use. I have not done
23 that on press brakes.

24 Q. Would it be fair to say that in

1 relation to gates and the use of gates that your
2 writings and your teachings have indicated that
3 they increase a danger of riding the pedal?

4 A. They decrease one danger, they increase
5 another one. That's what the whole purpose of
6 my work is.

7 Q. My question is very straightforward.
8 Would it be true that your teachings have been
9 that the use of gates move the foot controls
10 over to the right side of your schematic which
11 are more hazardous foot controls?

12 A. No, no, no, no, that's not what the
13 article says.

14 Q. Okay.

15 A. What the article says is the likelihood
16 of riding the pedal increases from left to right
17 as you go to the gated unit.

18 As you go from completely open to
19 completely closed with the mousetrap, the
20 likelihood of riding the pedal goes up. And
21 that's a bad thing except when you solve the
22 problem like Linemaster has, and if you have
23 a -- if you have the locking plate plus single
24 stroke control on your machine, you have now

1 solved the problem. And so you are now able to
2 take care of the accidental stepping onto the
3 pedal which gets better and better as you have
4 the gate in front and you are able to use that
5 wonderful feature of the gate because you
6 haven't introduced a new hazard in the machine.

7 Q. Does Linemaster continue to sell the
8 ungated foot control?

9 A. Sure, they sell a full line of controls
10 that do everything from completely unguarded
11 the -- to, you know, this whole menu of things.

12 Q. Has Linemaster ever indicated to your
13 knowledge in any of their literature that using
14 an ungated foot control on a press brake is
15 dangerous?

16 A. No, because they are not dummies. They
17 don't tell you what foot control to use for a
18 given machine. They don't do that. They leave
19 that to the manufacturer of the machines to
20 select from their menu and all the other
21 competitors' menus, select the ones that are
22 good for your machine.

23 Linemaster doesn't tell you on a punch
24 press to use this, on a press brake to use that.

1 They don't make that recommendation.

2 Q. Do you know of any press brake
3 manufacturer that has instructed that the use of
4 a gated foot control is dangerous or renders it
5 defective?

6 A. On a press brake?

7 Q. Yes, sir.

8 A. I don't know that anybody has ever said
9 that. I just know that they use gated controls.

10 Q. Do you know anyone in the industry
11 besides yourself that have ever -- has ever
12 offered the opinion that using an ungated foot
13 control on a press brake renders the foot
14 control defective?

15 A. I don't know. I have no idea what
16 opinions people are rendering.

17 Q. As you sit here today you are the only
18 person you know that has ever rendered that
19 opinion; is that right?

20 A. That's right. And I am probably the
21 most authoritative person that you will ever
22 find in this area.

23 Q. Have you ever rendered that opinion in
24 any other setting besides this lawsuit?

1 A. I don't think I said it this way. I
2 think that what I do is I present my data to
3 different people and the -- many of the
4 manufacturers of press brakes now use gated, you
5 know -- sell gated switches.

6 Where do they come from? Where do they
7 get this information from? They certainly could
8 have gotten it because they are all on my
9 mailing list to get my research.

10 Q. Do you know of any press brake
11 manufacturer that presently only sells gated
12 foot controls?

13 A. That only sells gated foot controls --

14 Q. Yes, sir.

15 A. -- this I don't know. This I don't
16 know. I know that almost all of them sell the
17 gated ones, but I don't know if that's the only
18 thing that they sell.

19 Q. Have you ever taught any of your
20 employees that using -- it is a pretty simple
21 concept, what you are testifying about, use of
22 an ungated foot control on a press brake renders
23 the press brake defective; right? Isn't that
24 what we have been talking about?

1 A. Well, you know --

2 Q. Is that --

3 A. I have to keep -- I have to keep
4 repeating the thing over and over again.

5 Q. I am sorry.

6 A. What I am saying is that if you have a
7 locking plate and you have a single stroke
8 capability, then the gated switch is the best
9 switch and the only one that you should sell
10 with a -- you know, with a press brake.

11 Q. I understand, but I have also asked you
12 to remove the locking gate from the equation and
13 I asked you if the absence of a gate renders it
14 defective, and you clearly said that it does.

15 A. The absence --

16 Q. Correct me if I am wrong.

17 A. Say it again, repeat that please.

18 Q. Sure. You had indicated that if we
19 remove the locking plate, the absence of a gate
20 on the foot control still renders that foot
21 control defective.

22 MR. HARTMAN: You said the absence of the
23 gate in the locking mechanism, Paul. He --

24 MR. ROBINSON: Please, don't interrupt my

1 questions. Do you have an objection?

2 MR. HARTMAN: Yes, I object that you
3 mischaracterize and misrepresent everything
4 that's happened and it is supported by the
5 transcript.

6 You repeatedly have asked this witness
7 about the same question. You don't like the
8 answer. He says it was defective because it
9 lacks the trigger, the locking plate and the
10 gate if you supply one that has neither of them.

11 And you keep asking this question and
12 you keep characterizing that he has said that
13 same thing, and he has not said that. The
14 transcript will bear that out.

15 BY MR. ROBINSON:

16 Q. Then by all means I want you to --
17 Professor Barnett, you are an educated man. I
18 want you to correct me if I say something that's
19 wrong. I thought whenever I said remove the
20 locking plate from this foot control --

21 A. Yes.

22 Q. -- in the very use that Tina Lindquist
23 was using it --

24 A. Yes.

1 Q. -- I thought you said that if the foot
2 control doesn't have a gate on it, you would
3 still consider that foot control to be
4 defective?

5 A. That's correct.

6 Q. Okay. Then I don't know what that
7 diatribe was. That's my point. So your -- so
8 the concept you are telling us today is that
9 regardless of whether or not that foot control
10 has a locking plate, if it doesn't have a gate,
11 it is defective?

12 A. That's correct.

13 Q. That's what I understood your testimony
14 to be.

15 A. But that's not enough.

16 Q. Go ahead.

17 A. But it is not enough. I also want the
18 locking plate on the thing.

19 Q. I understand what you are saying.

20 A. Okay, but --

21 Q. I understand what you are saying.

22 A. Okay, that's what I am saying.

23 Q. I am -- I was just trying to confirm
24 up, I am not sure why it keeps being said that

1 you are not saying this, that without that
2 locking plate you are saying it still needs a
3 gate?

4 A. Still needs a gate.

5 Q. Yeah, I hear you.

6 MR. HARTMAN: He says it needs a gate and it
7 needs a locking plate, Paul. Don't --

8 MR. ROBINSON: Mr. Hartman --

9 MR. HARTMAN: You are playing all your
10 games, Paul. You are sitting there playing
11 games and mischaracterizing things. And I am
12 not going to let you continue with this witness
13 without me pointing it out.

14 MR. ROBINSON: I really don't know what you
15 are doing, Mr. Hartman.

16 MR. HARTMAN: Paul --

17 MR. ROBINSON: You may have this illusion
18 that something is taking place. I am trying to
19 understand this gentleman's opinions, that's
20 all.

21 MR. HARTMAN: Then why don't you ask him
22 what he said as to --

23 MR. ROBINSON: Do you think there is some
24 kind of motivation involved with me trying to

1 find out?

2 MR. HARTMAN: Yes.

3 MR. ROBINSON: Then do that, but please
4 leave your comments to yourself.

5 MR. HARTMAN: Well, I think it is only fair
6 that you characterize what he said accurately
7 and completely as opposed to giving some bites
8 that you would like to read back to a jury at
9 some point in time and mischaracterize it out of
10 context.

11 BY MR. ROBINSON:

12 Q. We have indicated that the use of the
13 two-palm button switch would have prevented this
14 accident and the use of the appropriately
15 installed light curtain would have prevented
16 this accident?

17 A. Right, if you do them right.

18 Q. I understand. Would the -- what else
19 could have avoided this accident, besides the
20 gate issue and besides those two things, what
21 else could have avoided this accident, what
22 other features or conduct?

23 A. Well, what you could do is you can
24 develop a feeding and -- mechanisms and

1 unloading mechanisms that will support the HOOD
2 philosophy.

3 Q. And that would be the die design; would
4 that be correct? Is that what you are referring
5 to?

6 A. Well, it is not HOOD design. It is
7 hands out of die, so you have to have mechanisms
8 for putting workpieces into a die and getting
9 the workpieces out of the die, the -- and --

10 Q. That don't require use of the hands?

11 A. Right.

12 Q. And one of the ways to do that would be
13 to design the dies in such a way that you don't
14 have to have your hands inside the mechanism;
15 isn't -- that's what I have seen throughout the
16 literature.

17 A. Well, it is not designing the dies.
18 You know, that's just an oversimplification.
19 You know, you could -- I can make a robot, use
20 the same die as you have now and I have a robot
21 that picks up the part, puts it in the machine,
22 you make the stroke, picks the part, takes it
23 out of the machine and puts in a new part.

24 Q. And that's a different way, but at

1 least design of the die is one way you can
2 support -- did you know that Corry Manufacturing
3 designed -- made an attempt to design the dies
4 such that the hands were kept out of the die
5 area?

6 A. I don't know what it means to design
7 the die. I only know what it means to design
8 the system.

9 Q. Yeah, I will give you an example. They
10 designed the die, at least made some drawings
11 such that the mandrel of the die, do you know
12 what I am referring to?

13 A. Yes.

14 Q. Do you know that she was hand-forming a
15 metal around the mandrel?

16 A. I do.

17 Q. They designed the mandrel such that it
18 was on a swing gate that could be swung out away
19 from the point of operation so that when she was
20 hand-forming it, she could have done that
21 outside of the die area. That's what I mean by
22 die design.

23 A. Well, don't say that. Just talk about
24 the system because it is more --

1 Q. That's the way Corry -- in our facts,
2 sir, that's the way they referred to it.

3 A. I don't care how they refer to it. It
4 is not general.

5 Q. Do you know what I am talking about
6 now?

7 A. I know what you are talking about.

8 Q. That's what's important.

9 A. That's exactly what you are supposed to
10 do with the HOOD philosophy, design a system of
11 infeed and outfeed so that you don't have to
12 reach into the point of operation.

13 So one way to do this is to have a
14 lazy Susan and you do things here and then you
15 rotate the part into the machine. You have a
16 slide, you put things over here, you slide it
17 into the machine, the machine makes it stroke.

18 You have a robot that puts the thing
19 in, takes the things out. It is a system that
20 may involve die design, but it is an infeed,
21 outfeed system.

22 Q. I see what you are saying.

23 A. And that's a more general way to say
24 it.

1 Q. I understand. Is that something the
2 end user does when they -- is that something an
3 end user does?

4 A. If you want to use HOOD, that's what
5 you have to do.

6 Q. Is HOOD a good philosophy?

7 A. HOOD is a -- one of the working
8 philosophies, but it is not particularly a good
9 one.

10 Q. Is HOOD a beneficial philosophy?

11 A. It -- overall it is not.

12 Q. Are there more disadvantages to HOOD
13 than there are advantages to HOOD?

14 A. Well, there are --

15 Q. I am just trying to figure out what you
16 are saying. I don't understand.

17 A. What I am saying is the disadvantages
18 completely outweigh the advantages. That's why
19 HOOD has been no longer -- remember at one time,
20 I don't have to remind you of it, HOOD was put
21 into OSHA and said you are required to use HOOD
22 and they then after hearing said that was a
23 mistake, we will take it out, and so you no
24 longer have to do that.

1 The -- it destroys Americans. You
2 can't meet the code of ethics with HOOD. And
3 the engineers -- the engineering code of ethics
4 says the following, "An engineer shall hold
5 paramount the public safety, health and
6 welfare," meaning their economic welfare, "in
7 the discharge of his professional duties."

8 If you triple the cost of every product
9 that everybody has out there because you are
10 using some dumb manufacturing process like HOOD,
11 that is violating the code of ethics which is
12 supposed to be a trade-off among safety, cost
13 and function.

14 And there are other ways of doing
15 things. For example, a pull back device which
16 is now illustrated profusely in the -- in the
17 literature for press brakes, you put the things
18 in, your hands are in the die, if it starts to
19 come down, the pull back device pulls your hands
20 out. It is used in every punch press.

21 Q. And that's something the end user is
22 best responsible for doing also?

23 A. I agree, but it is a much better
24 philosophy. It is much more economical than the

1 HOOD philosophy.

2 Q. And maybe there is a miscommunication
3 in my question -- with my question.

4 Is having HOOD in addition to
5 appropriate point of operation safety devices
6 beneficial?

7 A. You can't -- there is no general answer
8 to the thing because what happens is in my
9 practice on power presses, for example, when we
10 tried to use HOOD we will have a mechanism that
11 feeds the press.

12 Now we no longer have anybody get hurt
13 with the press. But the mechanism happens to
14 take both of your arms off. You know, you need
15 mechanisms to do this. And these powered
16 mechanisms introduce all kinds of brand new
17 hazards in the thing. You have to look at each
18 situation. But it is one of the concepts.

19 If you could arrange things so that you
20 never reach in, I have a barrier guarding thing
21 that I stick things through a mail slot, put the
22 workpiece in and I could never get my hands in,
23 clearly this is a wonderful thing if you have a
24 part that allows you to do that, and so it is

1 one of the menus of safety concepts that we use.

2 Q. HOOD?

3 A. HOOD is one of them.

4 Q. That's my point. That's my question --

5 A. No question about it.

6 Q. -- that as long as you are using
7 appropriate point of safety devices, HOOD is an
8 excellent thing to teach?

9 A. Well, if you use HOOD, you don't need
10 any other safety devices. It does it by itself.

11 Q. It can't hurt it; can it? It can only
12 be beneficial --

13 A. No, it can hurt. It can hurt you
14 economically. And the methods you use to feed
15 the machine, let's take my robot, I am going to
16 have a whole practice of robots killing people.
17 You don't just put a robot on there and not take
18 the -- accept the risks involved in having a
19 robot. They are a dumb thing with huge power
20 and they beat your brains out.

21 Q. Do you think you should get rid of
22 HOOD?

23 A. No, no, no, no, you want HOOD to be in
24 your tool case as one of the safety devices that

1 you might use.

2 Q. Okay. Do you know of other ways that
3 this accident could be -- could have been
4 avoided other than what we have indicated?

5 A. I think you could have had a -- pull
6 back devices. I think you could have had a pull
7 back device on there.

8 Q. Any other ways?

9 A. That's what it -- comes to mind,
10 when we got light curtains, two hand controls,
11 you could have taken the stand that they had
12 there and moved the whole thing away from the
13 machine although it is very impractical to do
14 that and so gotten away with exactly what you
15 had. And the pull back device is an effective
16 way to do it.

17 I don't think you could use tongs and
18 whatnot because she is actually forming the
19 part, you know --

20 Q. Couldn't she have moved the pedal away,
21 a safe distance away from the point of
22 operation? Would that be another way?

23 A. That's what I said, that's one of the
24 things. You could move --

1 Q. I didn't know if you meant the pedestal
2 that contained the two-palm buttons or --

3 A. Either one.

4 Q. Okay, so she could have moved the --

5 A. Yes, right.

6 Q. -- the pedal as well.

7 A. Right. And so stomp it over here, it
8 is called the hostage control, you hit it here
9 and you walk to the machine and do your thing
10 and walk over. You have got to worry about
11 somebody else stepping on the pedal which is
12 basically out of your control when you do that.

13 Q. Did the foot control that was being
14 used by Tina Lindquist at the time of her injury
15 satisfy all government requirements?

16 A. I think so.

17 Q. Did it satisfy ANSI?

18 A. Yes.

19 Q. Did it satisfy OSHA?

20 A. Well, I am not sure it satisfies ANSI.
21 OSHA at the time of this accident did not
22 address press brakes so you had 1910.212 which
23 is the motherhood statement that says, help old
24 ladies across the street, so that's the kind of

1 thing that you have. Don't have accidents. Use
2 appropriate safety devices. So they were not
3 specific and offered no one any guidance. In
4 1973 OSHA gave no guidance whatsoever.

5 Q. And you may have misspoken. You
6 mentioned ANSI when you first started saying
7 that.

8 A. But ANSI did.

9 Q. Okay, and so it satisfied ANSI?

10 A. Well, it didn't really satisfy ANSI.

11 Q. That's what I am trying to figure out,
12 what --

13 A. Here is the problem that you have with
14 ANSI --

15 Q. I thought your report said it did, but
16 go ahead.

17 A. Well, ANSI wants you to inhibit
18 accidental activation, inhibit which means to
19 minimize the accidental activation, and you
20 can't eliminate it. You can inhibit it. So
21 when you have devices out there that minimize or
22 inhibit the thing better than others, you are
23 obligated to use them. I mean, you know, all
24 you have to do is have a foot control and have a

1 cover on the thing and say, gee, the cover
2 inhibits the thing; okay?

3 Q. Do you know of any ANSI provision that
4 was violated by this foot control which she was
5 using?

6 A. I think that in my view there is one.

7 Q. Yes, you can give me a verse.

8 A. It is in my report.

9 Q. Yes, if you could. We have marked that
10 as Exhibit C and here it is.

11 A. Very good. Here is the number, it is
12 4.2.4.2.4, foot control actuation prevention,
13 "The foot control shall be protected so as to
14 inhibit accidental activation by falling or
15 moving objects or by somebody stepping on it."

16 That's what's been violated because you
17 haven't inhibited it, the -- which should ask
18 you to do the best job you can. Remember what
19 the name of the things are.

20 Q. Did you ever testify before that this
21 relates to stepping onto -- whenever you were
22 representing the foot control industry or the
23 press brake industry, have you ever testified
24 under oath that this only relates to stepping

1 onto, not into a foot control?

2 A. What is -- you know, this is a very
3 confusing subject, so let's -- let me define,
4 you know, what I am talking about here.

5 Q. Yes, my question is very simple. Have
6 you ever indicated the opposite that it doesn't
7 relate to a step-into situation, this 4.2.4.2.4
8 but instead relates to stepping on top of it?

9 A. The only time I have given testimony
10 about that has to do with punch presses and
11 there is a confusion everywhere. The question
12 that I have is if the foot pedal or the foot
13 control is considered to be the entity that you
14 are talking about, you can't step into it. You
15 could only step onto it.

16 If you consider the foot pedal to be
17 the one that has a shield over the top, for the
18 first time you have something that you can step
19 into, see. But if that's not considered to be
20 the foot control, if the foot control is just
21 the part that has the pedal or the foot -- the
22 foot pedal or the foot control or even the
23 treadle, if that is the entity that we are
24 talking about, you can't step into it. There is

161

1 no into. You can only step onto it.

2 Q. Did you ever testify that the section
3 that we have cited only relates to stepping onto
4 the foot control in the context of a fully
5 housed -- let me just say it this way, a
6 top housed foot control?

7 A. Yes, and in every case that I have
8 testified that way I am referring to the entire
9 enclosed foot control, not the foot control as I
10 have just defined it.

11 Q. How about presently, does the ungated
12 foot control satisfy OSHA?

13 A. OSHA doesn't -- the OSHA doesn't apply
14 to press brakes. They don't have a specific
15 section on press brakes at the time this machine
16 was manufactured. If they have included it
17 now --

18 Q. I said presently.

19 A. I don't know what it is presently.

20 Q. You don't know?

21 A. I don't know.

22 Q. You don't know if OSHA specifically --

23 MR. ROBINSON: Let's mark this specific

24 Exhibit, what are we up to E? No F.

1 (Whereupon, Barnett Deposition
2 Exhibit F was marked for
3 identification.)

4 BY MR. ROBINSON:

5 Q. We have located some publications from
6 OSHA, safeguarding equipment in protecting
7 workers from amputations, have you ever seen
8 this before?

9 A. No.

10 Q. Where they actually give a -- what they
11 have quoted as a properly guarded foot control
12 and there is some discussion about --

13 A. For what machine? And how is it
14 configured?

15 Q. Have you ever seen this before?

16 A. I have seen that picture before but not
17 in this document, and they can't make a
18 statement like that if you don't talk about the
19 machine.

20 Q. Okay. Do you know that OSHA
21 investigated this?

22 A. I did hear that they did. I thought
23 there was a citation for not having a point of
24 operation device.

1 Q. Would you agree with that?

2 A. I would.

3 Q. If you were testifying for the
4 manufacturer, that would be something that you
5 would be pointing out, that it would have been
6 the employer's responsibility to have included a
7 point of operation safety device?

8 A. I am testifying for the plaintiff and I
9 am saying it. I don't represent -- I represent
10 the field of safety. I don't care whether it is
11 plaintiff or defense. I represent the truth.

12 Q. So you would be regardless of who you
13 are representing indicating that it was the
14 employer should have had an appropriate point of
15 operation safety device on this press brake?

16 A. Absolutely. On this particular
17 operation, absolutely.

18 Q. Do you know why she wasn't using the
19 two-palm button switch?

20 A. Yes, I do.

21 Q. Why is that?

22 A. Because her employer had told her to do
23 this hand thing, had used the switch and said --
24 which would -- you know, a supervisory switch

1 where she cannot use the hand button, she has to
2 use the foot control.

3 I mean they absolutely forged her into
4 this situation saying here is what you are going
5 to do and you are going to reach in by hand and
6 you are going to use the foot control.

7 When I went out to look at the machine,
8 somebody lost the key for the footswitch.

9 Q. When you went out to where?

10 A. When I made the inspection of this
11 machine.

12 Q. At Mr. Hartman's location?

13 A. Right, I couldn't use the footswitch
14 because it was on hand control and they lost the
15 key and they could not open it. So it was a
16 perfect application to show you here you have,
17 you know, an international expert on presses and
18 I am frustrated I can't use the foot control
19 because they have lost the key.

20 Q. Who lost it?

21 A. The company couldn't locate the key.
22 And they came out with picking, you know, they
23 had a lock pick. It is in my video, and they
24 couldn't pick the lock so I was not able to use

1 a footswitch. And that's what the supervisory
2 key is all about. So if she couldn't do it --
3 if I can't do it, how is she going to do it?

4 Q. Do you have any indication that the key
5 was lost at the time of her injury?

6 A. No, no, no, no, I think they
7 deliberately said in order for her to do this
8 thing, they have to turn the key and switch it
9 over to foot and away from, you know, from the
10 two-hand control, the hostage control, so
11 they -- what I am saying is they have
12 deliberately said this is where you want to do
13 it and there is nothing she could do to switch
14 back because they have locked out any point of
15 operation device. She has now got to use the
16 system that she is using.

17 Q. Did you read the --

18 A. It is tragic.

19 Q. Did you read the testimony from the
20 employees that said she did have access to the
21 key and that when they operated the press brake
22 and performed the same function that she was
23 operating that they used the two-palm button
24 switch?

1 A. I didn't read anything of a kind.

2 Q. You weren't provided with that
3 testimony?

4 A. I have never read that. And the -- and
5 her testimony is that this is what she was told
6 to do.

7 Q. Did you read all of the --

8 A. You understand I don't even -- what you
9 just said to me sounds as phoney technically as
10 you can get because I don't know how you do it.

11 Q. Did you read all of the deposition
12 transcripts in this case?

13 A. I don't know how many there are. I
14 just -- there is just three.

15 Q. Oh. Did you read any of the
16 depositions of the coworkers?

17 A. No, I just have the three that you have
18 there.

19 Q. Did you know that there were a number
20 of depositions of the coworkers including the
21 people that set up the press brake --

22 A. No, I didn't know one way or the other.

23 Q. -- that witnessed her conduct ten
24 minutes before and she was warned not to do

1 something that could cause her fingers to be cut
2 off?

3 A. I don't know one way or the other. I
4 have not seen any of that testimony.

5 Q. Have you ever been told by Mr. Hartman
6 as to -- that you haven't been provided with all
7 of the deposition transcripts?

8 A. How would I know that I haven't been
9 provided with them all?

10 Q. I said has he ever told you that he
11 didn't give you all the deposition transcripts?

12 A. No, he didn't say one way or the other.

13 Q. Have you ever heard any explanation as
14 to why you would not have been provided with
15 those employees' --

16 A. No, we --

17 Q. -- deposition transcripts?

18 A. -- just never discussed it.

19 Q. Is that something you would want to
20 see?

21 A. I don't know. I mean I don't need to
22 see anything based on the opinions I am giving
23 you.

24 Q. Is that something you would want to see

1 as an expert testifying in front of the jury?

2 A. Not with the testimony that I am giving
3 you. I have one, the one defect which is
4 completely independent of what those employees
5 have to say.

6 Q. Well, wouldn't her ability to choose
7 the point of the two-palm button switch have
8 some impact on your decision making?

9 A. Absolutely not because she doesn't know
10 anything about choosing point of operation. She
11 has been told to do something and she has done
12 exactly what she has been told to do.

13 Q. My point is there is contrary testimony
14 to that --

15 MR. HARTMAN: I am going to object and --

16 THE WITNESS: I don't believe --

17 MR. HARTMAN: -- indicate for the record
18 that Mr. Robinson is mischaracterizing the
19 testimony. I am not going to go into detail so
20 he does -- says I don't taint this witness. But
21 he is clearly mischaracterizing the testimony in
22 such a way to formulate these questions which is
23 not supported by the depositions he has taken.

24 No one has indicated that she had the ability to

1 make the change herself, no one.

2 MR. ROBINSON: Wow, Mr. Hartman, let's take
3 a break. I see your sandwich is here,
4 Mr. Barnett.

5 THE WITNESS: That's great.

6 MR. ROBINSON: I would ask that you continue
7 to not speak with Mr. Hartman about the case
8 during the break.

9 THE WITNESS: Sounds good to me.

10 THE VIDEOGRAPHER: Off the record at 3:04 p.m.

11 (Recess taken.)

12 THE VIDEOGRAPHER: Back on the record at
13 3:24 p.m.

14 BY MR. ROBINSON:

15 Q. Feel better?

16 A. I do. That was wonderful.

17 Q. Sure thing. That is not an issue.

18 Anyone that wants to take a break, by all means.

19 When we started, you were referring to
20 representing Rousselle in a prior case?

21 A. Yes.

22 Q. And you understand Rousselle to be an
23 affiliated company with Heim?

24 A. Yes.

1 Q. What did you represent them on?

2 A. Rousselle I don't remember whether it
3 was a press brake or a -- probably a punch
4 press, and my firm has represented Heim on a
5 punch press but never on a press brake.

6 Q. Now, let me make sure I understand your
7 reference to the punch press --

8 A. I think both of them, I have done punch
9 press -- my firm has done punch press cases for
10 them. The Heim case that we did on a punch
11 press was -- the project engineer was Peter
12 Barroso, B-A-R-R-O-S-O.

13 Q. He is with your company?

14 A. He was with my company.

15 Q. Where is he now?

16 A. He has his own firm. He has been gone
17 for 20 some odd years.

18 Q. Okay, punch press, you reference, what
19 are you referring to when you say punch press?

20 A. It is a -- the mechanical press B11.1
21 type of press, you know, the --

22 Q. Okay.

23 A. And --

24 Q. And when you say press brake --

1 A. Press brake, I don't think we have
2 represented either Rousselle or Heim on press
3 brakes.

4 Q. Okay. Whenever you use the term "power
5 press," what are you referring to?

6 A. To a punch press.

7 Q. To a punch press only?

8 A. Yes.

9 Q. You are not combining a press brake and
10 a punch press --

11 A. No.

12 Q. -- to equate to power press?

13 A. No, power press --

14 Q. Did I understand? I just want to make
15 sure I understand your terminology. I
16 understand the ANSI.

17 A. Okay.

18 Q. Have you or your firm ever represented
19 Heim or Rousselle relative to any foot control
20 issues?

21 A. I don't think so.

22 Q. In your billing records in this file
23 there is a reference to the old -- reviewing of
24 an old Heim file?

1 A. Yes.

2 Q. Were you aware of that?

3 A. I did but I think I represented
4 Linemaster on that file that I sent to you.

5 Q. Was that on -- that was a case in which
6 Heim was the conduit for selling a Linemaster
7 foot control?

8 A. Yes.

9 Q. Linemaster's liability would be Heim's
10 liability?

11 A. I think that they were both sued
12 independently.

13 Q. And that was a foot control case?

14 A. Yes.

15 Q. And now you are -- despite your company
16 representing Heim and Rousselle in prior cases,
17 you are now representing a plaintiff against
18 Heim?

19 A. Right, but you remember, our codes --
20 attorneys' code of ethics and my codes of ethics
21 are different in this regard. You wouldn't have
22 been able to take a case.

23 But an engineer, if it is on a
24 different subject, we can take cases. You know,

173

1 I have, you know, 50 percent of the cases
2 against U.S. Steel, 50 percent cases for, but
3 they are all on different divisions, you know,
4 the -- of U.S. Steel where you wouldn't be able
5 to take it at all having represented U.S. Steel.

6 As long as I am working on different
7 technology where nothing I learned can be used
8 against the company, that's ethical.

9 Q. It actually may be very similar with
10 lawyers. I don't think the prohibition is as
11 strong as you have indicated.

12 What is your understanding then of the
13 code of ethics in engineering? Is that what it
14 is called --

15 A. Yes.

16 Q. -- the code of ethics in engineering?

17 A. Yes, right.

18 Q. Are you engineer?

19 A. No, I am not. I am a scientist, but I
20 belong to the American Society of Mechanical
21 Engineers, Civil Engineers, you know,
22 Agricultural Engineers. I belong and have all
23 the codes of ethics from these companies.

24 Q. And I believe that's why you have

1 indicated in previous testimony that you believe
2 you are bound by the code of ethics in
3 engineering?

4 A. Absolutely.

5 Q. Have you testified before that once you
6 represent a manufacturer of a piece of equipment
7 you cannot represent someone adverse to that
8 manufacturer, do you recall giving that
9 testimony before?

10 A. Yes, but it is always on the same -- it
11 is always on the -- on a topic -- a topic -- I
12 can go against any manufacturer if it is a
13 different topic.

14 Q. Who -- is there a decision making body
15 that addresses ethical issues for engineers?

16 A. There is only -- each society has their
17 own, and it's -- I think you would characterize
18 them as just the most dreadful capability you
19 ever saw in your life.

20 You know, the -- but the codes of
21 ethics on every engineering society are almost
22 word for word identical. The people who
23 administer it, you know, are a strange group of
24 people. You get no feedback, so it is -- when I

1 report somebody to them, I am not allowed to
2 find out the disposition of the case, you know,
3 so you can't get the feedback you need to
4 evaluate them.

5 Q. And you believe you can represent
6 Linemaster relative to a foot control that was
7 sold with the Heim product or Rousselle product
8 and then represent a plaintiff against Heim or
9 Rousselle --

10 A. Oh, sure.

11 Q. -- relative to a foot control case?

12 A. Sure.

13 Q. Have you ever testified that you can't
14 do such a thing, it would be unethical to do so?

15 A. No.

16 Q. Do you remember addressing with a
17 number of attorneys these -- this ethical issue
18 of representing one company and then
19 representing a party adverse to that same party
20 you represented?

21 A. Oh, I am sure, I am sure that has been
22 part of my presentations on occasion.

23 Q. Is there any situation where an ungated
24 foot control in use with a press brake is not

1 defective?

2 A. No.

3 Q. The testing that you did --

4 A. Yes.

5 Q. -- relative to this case, I understand
6 through Mr. Ulmenstein that all of the test
7 subjects were employees at one time of Triodyne;
8 is that correct?

9 A. That is correct.

10 Q. Have you ever -- why didn't you go try
11 to find someone that's neutral?

12 A. They were neutral. It is a
13 double blind test. Ulmenstein doesn't know what
14 I was doing nor did the people know what I was
15 doing. Nobody knew what I was after and the
16 concepts behind it including Ulmenstein.

17 Q. Did you never tell them who you were
18 representing?

19 A. Oh, it has nothing to do with
20 representing.

21 Q. Did you tell them who you were
22 representing?

23 A. I don't think so, but that has nothing
24 to do with it.

1 Q. I know you have said that a couple
2 times. Keep away from that please.

3 My question is --

4 MR. HARTMAN: Wait, wait, let him answer
5 your question.

6 BY MR. ROBINSON:

7 Q. Oh, I am sorry, if I interrupted. Go
8 ahead.

9 A. Well, go ahead. You think that has
10 something to do with it, you know, you can
11 harbor that misconception if you like.

12 Q. I don't understand that comment. Why
13 do you say that?

14 A. This testing, no one knows whether it
15 is for or against somebody. They are all
16 thinking that I am trying to find out something
17 about technology.

18 Q. My question is very simple is, it is
19 did you -- I am asking you did you advise any of
20 the test subjects to who you were representing
21 in the case?

22 A. No, no, or that there wasn't
23 necessarily a case.

24 Q. Was Tina Lindquist sitting or standing

1 when she was injured?

2 A. The best I can determine is that she
3 was either seated or leaning against the -- a
4 seat, that's the best. I have not interviewed
5 her, you know, to find out more.

6 Q. Your test involved standing people?

7 A. Right.

8 Q. Dissimilar to the seated or leaning.

9 A. Of course they are dissimilar. I am
10 not trying to simulate what she is doing. I am
11 trying to do something much more effective.

12 Q. And what would that be?

13 A. I am trying to develop a worst case
14 scenario, the -- and that's what I did. I --
15 and I am really pleased that it worked almost
16 perfectly the first time, developed a scenario
17 that you almost 100 percent of the time will
18 accidentally activate a switch. And as soon as I
19 put the gate on, it is 100 percent of the time
20 you will never activate the switch.

21 Q. You had people watch the video, you had
22 people standing there and stepping into the foot
23 control, one of which had a gate and one of
24 which did not; is that an accurate description?